IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 660 of 1995

with

CRIMINAL APPEAL No 771 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAJESH @ RAJU @RAJA SHAKHARAM DIGE

Appearance:

1. Criminal Appeal No. 660 of 1995

MR. A.J. DESAI, LD. APP for Petitioner No. 1
MR BS PATEL for Respondent No. 1-3/NIT
MRS RANJAN B PATEL for Respondent No. 1,2,3/NIT
NOTICE SERVED for Respondent No. 1,2
(MR SD PATEL) for Respondent No. 1,2/NIT

2. Criminal Appeal No. 771 of 1995

MR KJ SHETHNA, Ld. Advocate for Appellant
No. 1 to 4, 8, 9, and 13
MR. P.M. THAKKAR, Ld. Advocate for 5-7, 10-12.
MR. A.J. DESAI, LD. APP for Respondent State.

CORAM : HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 01/10/2003

CAV JUDGEMENT
(Per : HON'BLE MR.JUSTICE N.G.NANDI)

1. Criminal Appeal No. 660 of 1995 under section 378 of the Code of Criminal Procedure (hereinafter as the 'Code') against the acquittal of original accused No. 10, 17 and 18; and Criminal Appeal No. 771 of 1995 under section 374 (2) of the Code challenging the conviction under section 302 read with section 149 of I.P. Code of original accused No. 1, to 4, 7 to 9 and 11 to 16; are directed against the judgment & order rendered in Sessions Case No. 171 of 1994 (old TADA Case No. 15 of 1993) by the Learned Addl. Sessions Judge, Vadodara.

2. The facts giving rise to the filing of both these appeals, one under section 378 of the Code challenging the acquittal by the appellant State and the appeal under section 374 (2) of the Code by the appellants-convicts, shortly stated are; that one Dinesh Ramanlal Pathak was working as the Resident Editor of local daily newspaper "Sandesh" at Vadodara; that Dinesh Pathak was also dealing in the land business; that Raju Kisan Bhoi was employed as the driver for Fiat Car bearing No. GBW-633 owned by Dinesh Pathak; that one Parimal Chimanlal Bhatt working with Dinesh Pathak used to accompany Dinesh Pathak whenever he used to go out; that Dinesh Pathak in 'Sandesh' newspaper used to report news in respect of Raju Risaldar, President of local unit of "Shiv Sena" and the activities of Shiv Sena; that Raju Risaldar had become enraged and had therefore administered threats to kill Dinesh Pathak; that in 1992 Navratri Garba Mahotsav at Ellora Park was cancelled because of the threats by Shiv Sena; that Garba Mahotsav was later resumed and in a public speech Raju Risaldar referred to Dinesh Pathak and also stated that along with Ashwin Shah and Maulin Vaishnav, Dinesh Pathak would be liquidated; that some of the persons from the group of Raju Risaldar had met

Dinesh Pathak and informed him that Raju Risaldar had conspired to kill him and in furtherance of the said conspiracy on 22-5-1993 at about 7.15 p.m. one boy pretending that, he has applied for job and if Dinesh Pathak recommends him, he would get a job, entered the premises of Sandesh Press along with Dinesh Pathak and Parimal Bhatt, whereupon Dinesh Pathak asked him to come to the office and Dinesh Pathak was followed by that boy; that after walking some distance the boy took out a knife from his pocket. Seeing this, Parimal Bhatt who was closely following them speeded up, in the meantime that boy dealt blow in the chest of Dinesh Pathak. Parimal Bhatt jumped and tried to over power the boy and grappled with him to snatch knife from the assailant; that boy raised shouts whereupon 13 to 14 persons having deadly weapons like swords, gupties, pipes, samurai came inside the compound of Sandesh Press and assaulted Dinesh Pathak; that Raju Bhoi hearing the cries from inside the press premises rushed inside and tried to intervene; that while trying to rescue Dinesh Pathak, Parimal Bhatt and Raju Bhoi also sustained injuries; that 13 to 14 persons who had rushed inside dealt number of blows on the person of Dinesh Pathak by gupti, Samurai, knife etc.; that Dinesh Pathak on receipt of number of blows delivered by assailants fell down and the assailants ran away; that the staff members of the Sandesh Press, other injured Parimal Bhatt and Raju Bhoi and other witnesses took injured Dinesh Pathak to SSG Hospital where he was declared dead. The complaint about the incident came to be lodged by driver injured Raju Bhoi in Karelibaug Police Station within about one hour of the incident. Postmortem examination was conducted on the dead body of Dinesh Pathak; that on the basis of the complaint offence was registered, thenafter usual investigation started; that before the completion of investigation against accused persons - 18 in number the chief conspirator Raju Risaldar died on 3-6-1993 in police encounter and he was not shown as an accused in the chargesheet. The accused persons were committed to the Court of Sessions to stand trial. Sessions Court framed charge vide exhibit-2. All the accused persons denied the charge levelled against them and claimed to be tried. The prosecution inorder to bring home the guilt to the accused adduced voluminous evidences, oral as well as documentary. Sessions Court recorded further statements of the accused persons under section 313 of the Code; giving opportunity to the accused persons to explain the circumstances emerging from the prosecution evidence, incriminating against them. The defence is that of total denial. The trial court appreciating the oral as well as documentary evidence and also considering statements under section

313 of the Code found accused No. 1 to 4, 7 to 9, and 11 to 16 guilty for the offence under section 302 read with section 149 of I.P. Code and convicted each of them to suffer imprisonment for life. No separate sentence was provided for remaining offence proved against these accused persons. The trail court by the said judgment & order acquitted accused No. 5, 6, 10, 17 and 18 of the charges levelled against them.

It is this judgment & order of conviction and sentence for the offence under section 302 read with section 149 I.P.C. which has been assailed by the appellants original accused No. 1 to 4, 7 to 9, 11 to 16 by filing Criminal Appeal No. 771 of 1995; whereas acquittal of original accused No. 5, 6, 10, 17 and 18 has been challenged by the appellant State by filing Criminal Appeal No. 660 of 1995.

3. We have been taken through the oral as well as documentary evidence by Mr. K.J. Shethna, Learned Sr. Advocate for appellant Nos.1-4, 8,9 and 13 and Mr. P.M. Thakkar, Learned Sr. Advocate for appellant Nos 5-7and 10-12 in course of their submissions. We have also perused and reappreciated the oral as well as documentary evidence and statements under section 313 of the Code.

4. It may be noted at the out set that the Learned Trial Judge in para-12 of the judgment framed points for determination. Point No.2 is ' whether the prosecution proves that all the accused persons along with Raju Padmakant Ramakant Risaldar (deceased) hatched conspiracy between 16-5-1993 to 20-5-1993 to commit murder of Dineshbhai Pathak, Resident Editor of 'Sandesh' daily newspaper on 22-5-1993, and for that purpose during this period between 16-5-1993 to 20-5-1993 they collected at the residence of Raju Risaldar and in the open plot of Kasturinagar, behind Shreyas High School, Manjalpur and on the road from GIDC to Majalpur, and thereby committed offence under section 120B I.P. Code. Learned Trial Judge on appreciation of evidence found Point No.2 in the negative, meaning thereby the charge under section 120-B of I.P. Code was found not proved against the accused persons. It may be noted at this juncture that, by filing Criminal Appeal No. 660 of 1995 the appellant State has challenged the acquittal of the original accused No. 10, 17 and 18 only and no appeal challenging the acquittal of original accused No. 5 & 6 has been filed by the State, meaning thereby the State also has not challenged the acquittal under section 120-B of I.P. Code of the appellants of Criminal Appeal No. 771 of 1995 by filing appeal in that regard. Thus the findings

as regards failure to establish charge under section 120-B of the I.P. Code against the appellants of Criminal Appeal No. 771 of 1995 and original accused No. 5 and 6 has become final.

5. It has been mainly argued by learned advocate Mr. K.J. Shethna, appearing for appellant No. 1 to 4, 8, 9 and 13 that the identify of the accused in the incident as well as in the test identification parade is not established; that the identification parade is not free from suspicion and loses its credibility as the same does not inspire any confidence; that the description as regards height, complexion, colour of skin and the features of the first assailant or any of the assailants have not given in the previous statement by the so called eye witness, and therefore, the identification in the parade by the eye witnesses cannot be said to be reliable and trustworthy; that there was no basis on which the Executive Magistrate (PW-48) could call for dummy; that the story as regards the speech stated to have been made by Raju Risaldar threatening the deceased and others by saying that the " snake has gone but the marks are left" is a concoction; that it would be impossible that after receiving the first blow Dinesh Pathak would be able to stand and could move upto the bath room and at the same time assault would continue; that no Rampuri chaku (knife) is before the Court; that there is no evidence about vehicles outside the gate of Sandesh Press premises seen before the incident or even at the time of incident; that looking to the map exh-172 from near the ota bathroom cannot be seen; that the injury suffered by PW-7 Parimal Bhatt is minor; that after he had seen first assailant i.e. accused No. 12 inflicting knife blow to Dinesh Pathak, then in that event the conduct of the first assailant would be to inflict serious injury to PW-7 as he is stated to have been seen by PW-7 inflicting injury on Dinesh Pathak; that the assailants must have been shown to the witnesses before the Test Identification Parade and that is why there is quick identification of the assailants by the witnesses in the parade; that unless police playing its part dummies for Test Identification parade could not have been brought resembling the accused in height, complexion, etc as PW-48 did not have any basis for calling the dummies of particular height, complexion, colour etc.; that the conduct of Dinesh Pathak even after receipt of first knife blow is highly unbelievable in as much as after receiving knife blow the injured would not have remained standing at that very place when PW-7 is stated to have been grappling with accused No.12; the attempt is to nab as many persons as possible of Shiv Sena; that the

complaint exhibit-90 is not free from doubt because how the complainant who himself was injured could give such a lengthy complaint; that looking to the evidence of PW-9 he could not have seen faces of the assailants so as to identify the assailants in the incident; that there is delay in filing report under section 157 of the Code.

Mr. K.J. Shethna has cited the following decisions :-

1. AIR 1991 S.C. pg. 56
2. AIR 1991 S.C. pg. 63
3. AIR 1970 S.C. pg. 1321
4. AIR 1998 S.C. pg. 2864

It is submitted by Mr. P.M. Thakkar, learned advocate appearing for appellant No. 5, 6, 7, 10, 11 & 12 that the accused not named in the FIR exh-90 are subsequently got up, and through the defective identification parade they have been languishing in jail since last ten years; that there is possibility of accused having been seen by the witnesses before the identification parade; that the police selected 52 dummies and not the investigating agency; that neither PW-48 says that he has asked Panch No. 1 Jagdishbhai to stay out nor Panch No. 1 Jagdishbhai states that he was asked by PW-48 to stay out; that no reliable and independent panch was kept present in the parade nor any precaution was taken by PW-48 as required under the circular issued by the State Government for holding identification parade; that there is no evidence to suggest that the faces of the accused were covered/muffled; that neither the panch nor the witnesses were told that the identification parade is arranged for the identification of the accused in the murder case of Dinesh Pathak; that the panch and the witnesses did not know as to for which case the accused are to be identified; that it is in the evidence of PW-55 panch Jagdishbhai an attempt is made to introduce Dinesh Pathak Murder Case which even PW-48 does not know; that exh. 165 Test Identification Parade panchnama does not refer to Dinesh Pathak Murder Case.

Mr. P.M. Thakkar, has cited the following decisions:-

1. AIR 1991 S.C. Pg. 1938
2. AIR 1987 S.C. pg. 1222
   (1999) 8 SCC pg. 428
3. AIR 1994 SCC (Cri.) 232
4. AIR 1993 S.C. 2618

5. AIR 1981 S.C. 1392
6. AIR 1970 S.C. 1321
7. XXXVII (2) GLR Pg. 821
8. 1993 (2) GLH (U.J) pg. 13
9. 1993 (1) GLH pg. 33
10. 1988 (1) GLH pg. 264
11. 1993 (1) Crimes pg. 451

It is submitted by Mr. A.J. Desai, learned APP that each of the convict is identified by atleast two of the prosecution witnesses; that raising of shouts/cries by accused No.12 when PW-7 was grappling with him to snatch the knife was a signal to the other assailants waiting outside; that the attention of all witnesses were at the victim and accused No.12, and taking advantage of this other assailants entered the premises; that exhibit-172 map suggests the blood was found at the place where the injuries were caused to Dinesh Pathak as deposed by prosecution witnesses; that PW-7 and PW-9 not only witnessed the incident but also sustained injuries; that PW-9 seeing the assailants inflicting blows on Dinesh Pathak went upstairs to call other staff members and when he returned he saw the assailants going away; that PW-9 identified the assailants as he witnessed the incident before going upstairs to inform other staff members about the blows being inflicted on Dinesh Pathak; that it is quite natural for PW-9 having witnessed the incident to fix the identity of the assailants in the incident; that there is no material contradiction in the evidence of PW-9; that PW-8 Pravinsinh Laxmansinh Raul is an independent witness and has identified accused No. 7, 9, 11, 13 and 15; that PW-11 Security Guard Ramakant Ratnagar Yadav had explained why accused No.12 the first assailant was allowed to enter the premises; that complaint exhibit-90 has been given within one hour; that detailed complaint does not mean doubtful complaint and the same cannot be faulted; that the offence has been registered at 10.05 p.m., there was no time for any concoction or manipulation; that there is no evidence for any enmity between accused and witnesses and there is no reason to falsely implicate the accused; that the incident took place at 7.10 p.m.; that PW-21 gave Vardhi exh. 191 which was received by the control room at 7.30 p.m.; that PW-68 I.O. got the message at 7.34 p.m. vide exhibit-13 and reached the place of incident at 7.45 p.m.; that he came to the hospital at 7.55 p.m. and started recording complaint at 8.15 p.m.; that there was no time to create detailed complaint as alleged; that the authorities acted promptly in the matter; that the conduct of accused No. 10, 11 and 12 is suggestive of their involvement in the incident; that accused No.12 has

been identified by PW-1, 2, 3, 4 and 5 respectively, whereas accused NO. 11 is identified by PW-1, and PW-3 and PW-3 has also identified accused No. 10. That, the relations and friends of the injured persons have supported the prosecution by deposing against the accused which suggest the truthfulness in the version of the prosecution; that according to the complaint exh. 90 the assailants are of the age of 23/24 years, whereas according to the T.I. Panchnama exh. 165 the accused are of the age of 18 - 35 years; that there is no need to tell the witnesses that the accused of Dinesh murder case are to be identified because the incident had taken place in Sandesh Press and the witnesses were from the Sandesh Press and that was the only incident in the Sandesh Press; that the identification parade was conducted in an absolutely lawful manner consistent with the requirements of the circular issued by the State Government for holding the identification parade; that the identification parade could be arranged only after all the accused are arrested as there cannot be any piecemeal identification parade and the accused persons have been arrested between 3-6-1993 and 10-6-1993 and the yadi exh. 164 for arranging parade was sent on 15-6-1993 and the parade has been arranged on 17-6-1993; that the report was sent under section 157 of the Code without any delay as the incident took place at 7-10 p.m. of 22-5-1993 which was a Saturday and because of the intervening Sunday the report under section 157 of the Code was delivered to Judicial Magistrate on 24-5-1993, and there is no question of delay in sending report; that PW-7 & 9 are interested witnesses but not related witnesses and at the most their evidence is required to be scrutinised carefully; that PW-9 has not been cross examined as to how the names of accused No. 1,2, 3, 7 & 16 named in the FIR were known to the complainant prior to the incident.

On behalf of the respondent-State, following decisions have been cited :-

1. (2001) p SCC pg. 362
2. AIR 1974 S.C. pg. 1983
3. AIR 1981 S.C. pg. 697.

Mr. B.S. Patel, Learned advocate for the respondents (original accused No. 10, 17 and 18 in Criminal Appeal No. 660 of 1995 has submitted that the charge under section 120-B of the I.P. Code for hatching conspiracy has not been proved and that the respondents have been acquitted for the offence under section 302 r/w section 149 of I.P. Code; that no acquittal appeal at all has been preferred challenging the acquittal of

accused No. 5 & 6; that the acquittal of accused No. 1-4, 7-9, 11-16 under section 120-B of the I.P. Code has not been challenged and therefore, and therefore consideration of charge under section 120-B of I.P. Code is out of question for all; that there is absolutely no evidence against accused No. 10, 17 & 18 so as to hold them guilty and that no interference is called for in the judgment of acquittal by the trial Court.

6. The death of Dinesh Pathak in the incident of 22-5-1993 in the premises of daily news paper "Sandesh" being homicidal death is not disputed by the appellants. The inquest panchnama exh. 49 on the dead body of Dinesh Pathak suggest as many as 30 injuries. Postmortem report exh. 83 prepared by PW-1 Dr. Vaishaki Dave (exh. 82) suggests as many as 87 external injuries on the dead body of Dinesh Pathak; that all the injuries were ante mortem and in the ordinary course of nature sufficient to cause death. Thus in the incident of 22-5-1993 at 7.10 p.m. in the premises of Sandesh Press Dinesh Pathak died a homicidal death.

7. As far as the occurrence is concerned PW-7 Parimal Chimanlal Bhatt, PW-8 Pravinsinh Laxmansinh Raul, PW-9 Raju Kishanrao Bhoi, PW-10 Niranjansingh Kishanal Jat - security guard, and PW-11 Ramakant Ratnagar Yadav security guard are the eye witnesses to the occurrence. According to the prosecution on 22-5-1993 at about 7.10 p.m. Dinesh Pathak, Resident Editor of daily newspaper 'Sandesh' (Vadodara) along with Parimal Bhatt (PW-7) came to Sandesh Press premises in his fiat car bearing No. GBW-633 driven by driver Raju Kisanrao Bhoi (PW-9); that the car was stopped near the main gate, Dinesh Pathak and Parimal Bhatt got down from the car and through wicket (small) gate entered the compound; that Dinesh Pathak and Parimal Bhatt were going towards the office inside the press and the driver was parking the car inside the main gate, at that time one boy entered from the small gate and told Dinesh Pathak that he has applied for a job and his recommendation would get him the job. Dinesh Pathak asked him to come to the office. Thereafter all of them walked towards the office when Dineshbhai was going towards the passage, at that time the boy who was walking behind Dineshbhai followed by Parimal Bhatt near the staircase in the passage that boy walked quickly, took out the knife and opened it, Parimal Bhatt seeing this shouted 'Dineshbhai...' . but by that time that boy had dealt knife blow in the chest of Dinesh Pathak. Dinesh Pathak moved backward and Parimal Bhatt jumped and intervened and tried to snatch the knife from the assailant, and was grappling with the assailant. In the

process Parimal Bhatt sustained injury on the left hand. The boy was trying to escape as he was tightly held by Parimal Bhatt. Hearing the shout from inside complainant Raju Bhoi rushed in the press premises and tried to snatch knife from the assailant who raised shouts "come....come"; whereupon a mob of 13-14 persons came inside with sword, Samurai, pipe etc. Parimal Bhatt told Dinesh Pathak to go upstairs from the nearby staircase but Dinesh Pathak could not climb the stair case and started going towards bath room. The mob chased Dinesh Pathak inflicting blows, Dinesh Pathak fell down near the bath sustaining number of blows with the weapons. The mob of assailants then ran away shouting that ' whoever comes against their boss Raju Risaldar, he would meet the same fate'; that thereafter the assailants went away on scooter and rikshaws towards Sadhnanagar Society.

8. It is suggested from the evidence of PW-7 Parimal Bhatt, who was learning the work of newspaper reporting from Dinesh Pathak that, when he and Dineshbhai entered Sandesh Press compound, one boy also entered the Press compound telling Dineshbhai that he has applied for job and if Dineshbhai recommends he would get the job; that Dineshbhai asked him to come to the office upstairs; that the witness followed that boy who was walking behind Dineshbhai going towards the office; that reaching near the staircase that boy speeded up and came near Dineshbhai and opened the knife, seeing this the witness shouted 'Dineshbhai'. In the meantime that boy dealt knife blow in the chest of Dineshbhai. Dineshbhai moved backward. The witness jumped and intervened and tried to snatch knife from that boy, in the process witness sustained injury on the left hand. The assailant was trying to free from the grip of the witness and both were grappling. At that time driver Raju Bhoi came inside. He also tried to snatch the knife from the assailant but did not succeed. At that time Dinesh Pathak came near the witness and the assailant started shouting " come, come, beat.. beat" whereupon from the gate a mob of 13-14 boys came with sword, gupti, samurai etc. and 5-6 boys directly attacked Dineshbhai. One person dealt a blow on the left ear of Dineshbhai, second blow was left on the hand; that the Witness asked Dineshbhai to run away, whereupon Dineshbhai ran up to the staircase leading to the office but could not climb the staircase, and ran through the passage towards bath room but as there was no further passage, the mob followed Dineshbhai upto the bath room giving blows after blows and Dineshbhai fell down near the bath room. The first assailant also ran towards the bathroom. Thereafter the mob of assailants left shouting "who ever comes against

their boss Raju Risaldar he will meet the same fate." At that time the other staff members Vinodbhai, Viswajit, manager Mehta and others reached the spot and Dineshbhai was taken to the car in the injured condition and removed to SSG hospital where doctor declined him dead. It is also suggested from the evidence of the witness that the witness in the incident identified accused No.1 Dilip Thakore, accused No.2 Hari Narvekar, accused No.3 Raju Pawar, accused No. 7 Dilip Solanki and accused No. 16 Shyam Saleskar. All these accused persons have also been identified by PW-7 in his evidence before the Court. The evidence of PW-7 also discloses that seven persons who were present were also identified in the identification parade whose names were asked by Executive Magistrate and noted down, and before the Court also he identified said seven accused; that on 17-6-1993 in the identification parade he had identified accused No.4 Raju Shanabhai Thakore, accused no.8 Jayanti Rajput, accused No. 9 Dilip Uttekar, accused No. 11 Vijay Sapkal, accused No.12 Shrirang Korde, accused No. 14 Ashok Parmar and accused No. 15 Anwarhusein @ Vicky. The evidence of PW-7 also discloses that in the identification parade he identified the boy who dealt first blow on Dineshbhai as accused No. 12 Shrirang Korde. The witness has also identified accused No.12 before the court. Evidence of PW-7 also discloses that when Dineshbhai in injured condition was running towards the bath room he was followed by the mob of assailants inflicting gupti blows on him and that number of blows were given by the mob of assailants to Dineshbhai and because of the number of blows there was perfused bleeding.

9. The evidence of PW-9 complainant Raju Bhoi discloses that Dineshbhai and Parimal Bhatt got down from the car outside the gate. They entered the compound, the main gate was opened for parking the car inside, that he had parked the car inside. Hearing the cries from inside the premises he went inside and saw one boy inflicting knife blow in the chest of Dineshbhai and that Parimal Bhatt intervened and was trying to snatch knife from him. In the process Parimal Bhatt sustained injury with the knife. The assailant who was held by Parimal Bhatt raised shouts 'come...come' whereupon 13-14 persons rushed inside with the weapons. One boy gave sword blow in the head of Dineshbhai, whereupon Parimal Bhatt asked Dineshbhai to go upstairs but Dineshbhai could not go up, so Dineshbhai was attacked again and Dineshbhai started running towards the bath room. The assailants giving blows to Dineshbhai dragged him towards both room. Seeing this, PW-9 climbing stairs went upstairs to inform the other staff members and immediately returned to the

spot with the staff members, and at that time PW-9 saw the mob of assailants going towards the gate shouting "whoever comes against their boss Raju Risaldar he would meet the same fate." It is also disclosed from the evidence of PW-9 that in the incident he identified 5 assailants giving their names as accused No. (1) Dilip Thakore, No. (2) Hari Narvekar, No. (3) Raju Pawar, No. (7) Dinesh Solanki, No. (16) Shyam Saleskar and that the witness has identified all these accused persons also before the court. It is also stated in evidence that over and above these accused persons whom he knew by their names, he also knew other assailants by their faces; that during identification parade on 17-6-1993 before the Executive Magistrate he identified 7 accused, namely accused No. (4) Raju Thakore, No.(8) Jayanti Rajput, No.(9) Dilip Uttekar, No.(12) Srirang Korde, No. (13) Babu Syamji Makwana and No.(15) Anwar @ Vicky, and the witness has also identified accused No. 4, 8, 9, 12, 13, 13 and 15 before the Court. This witness had also tried to snatch the knife from the assailant and in the process he sustained injury.

10. It is suggested from the above evidence of PW-7 and PW-9 that along with other staff members of Sandesh Press they also came to SSG hospital, Vadodara, taking Dineshbhai in injured condition to the hospital. According to both these witnesses they were treated for the injuries received by them in the SSG hospital.

P.W-13 Dr. Sunilkumar Mavjibhai stated in his evidence that on 22-5-1993 he was attached as Medical Officer, SSG Hospital, Vadodara, and at about 7.50 p.m. Raju Kisanbhai Bhoi (PW-9) came with police yadi of Karelibaug police station; that the witness examined the by patient who was conscious and gave case history as having been injured by sword; that the external injuries found on the left hand finger has been noted in the certificate exh. 98 issued by the witness; that the injury on the person of the patient could be caused by sharp edged weapon like knife. Evidence of PW-13 further suggests that on the same day at about 8.00 p.m. one person Parimal Bhatt (PW-7) came with Karelibaug police station yadi for treatment; that the witness examined the patient who was conscious and gave case history as having been injured with knife at about 7.30 p.m.; that the external injuries noted on the left hand thump (palm) as C.L.W. were noted in the injury certificate exh-99 issued by the witnesses; that the injury no.1 could be caused by knife. Injury no.2 could be caused by hard & blunt substance. Nothing substantial has been brought out in the cross examination of both these witness as

regards the injures found on the person on PW-7 and 9. It would thus be seen that presence of PW-7 and 9 at the place of incident is sufficiently suggested and also the injury received by them in the incident while trying to snatch knife from accused No. 12 as suggested from their evidence. It would be seen from the above that PW-9 has identified accused No. 1, 2 , 3 , 7 and 16 and named them in the complaint exhibit-90 and also identified before the Court, whereas the other assailants in the incident whom he did not know by name but knew them by faces and identified in the incident have also been identified in the identification parade on 17-6-1993 as accused No. 4, 8, 9, 12 , 13 and 15 and also identified them before the Court as some of the assailants in the incident. The evidence of PW-7 suggests that in the incident he had identified accused No. 1-3, 7 & 16 and also identified No. 4, 8, 11,12, 13 and 15 in the identification parade on 17-6-1993 and all these accused have been identified before the Court. The evidence of PW-7 and 9 discloses that PW-9 stands corroborated by the evidence of PW-7.

11. The other witness to the occurrence is PW-8 Pravinsinh Laxmansinh Raul, who was the camera incharge. It is suggested from his evidence that on 22-5-1993 he reported to the duty in Sandesh Press as Camera Incharge at 6.00 p.m. and at about 7.15 p.m. when he was taking tea, car of Dinesh Pathak came from Sadhnanagar Society and stopped outside the gate; that Pathak and Parimal Bhatt got down from the car and went inside the compound, that thereafter main gate for vehicle was opened and Raju Bhoi took the car in reverse in the compound; that within two minutes cries " save.....save" were heard, whereupon the witness went inside the press and saw Parimal Bhatt holding one boy; that Dinesh Pathak was standing behind Parimal Bhatt at that time 5-6 persons having deadly weapons like sword, gupti, samurai, knife, curved knife (Khanjar) rushed in the premises and the person in the front attacked Dineshbhai with Samurai (double edged weapon) on ear, whereupon Dineshbhai ran towards passage. The witness raised shouts " don't kill....don't kill". These 5 to 6 persons followed Dineshbhai inflicting blows; that after 5-6 minutes the assailants went away; that one assailant having hockey came and stood near Dineshbhai whereas the other assailant had put the sword on the neck of security guard so that no telephone is sent to the police; that while going away one person spoke " if anyone intervenes open fire". The assailant ran away on scooter & rickshaw. In the meantime Viswajit came from the upper floor, Dinesh Pathak in injured condition with bleeding was lying near the bathroom with

multiple injures on his body. Thereafter Pathak was taken to SSG hospital. The evidence of PW-8 suggests that, in the identification parade held on 17-6-1993 he had identified accused No. (7) Dinesh Solanki, accused No.(9) Dilip Thakore, accused No. (11) Vijay Sapalkar, accused No. (13) Babu Makwana and accused No. (15) Anwar @ Vicky, and this witness also identified accused No. 7, 9, 11, 13 and 15; that he did not see the assailant who was grappling with PW-7, but has stated that PW-7 and PW-9 had sustained injuries on their hand.

12. The evidence of PW-10 Niranjansingh Kishanlal Jat- security guard, suggests that, at the time of incident along with him the other security guard in Sandesh Press was Ramakant Ratnagar Yadav; that at about 7.30 0' clock in the evening he was at the tea larry near Sandesh Press for taking tea; that at that time he heard shouts "save.. save" from inside the press, that he returned to his security table with glass of tea and saw Parimal Bhatt holding one person and Raju driver was trying to snatch knife from that person, the witness also saw Dinesh Pathak looking blank was standing nearby; that soon thereafter the witness saw 13-14 persons entering the press with weapons knife, hockey, pipe, sword, samurai etc; that one person first gave blow with knife or samurai on one of the ears of Dineshbhai, whereupon Dineshbhai ran towards inside followed by 5-6 persons with weapons and other 5-6 persons were standing in the compound. The witness asked other security person Ramakant to telephone police whereupon one person held sword near the back of neck of Ramakant threatening Ramakant if he telephoned police he would be killed; that one person was having hockey stick with him; that those 5 - 6 persons who ran after Dineshbhai came out after sometime and one person shouted that " if any one took the name of their boss Raju Risaldar he would meet the same fate" and thereafter all these persons went towards Sadhnanagar society and the noise of rickshaw, scooter were heard; that thereafter Dinesh Pathak was put in the car and was taken to SSG Hospital. The evidence of this witness also suggest that out of the 13-14 assailants he had identified six persons and the person who was held by Parimal Bhatt was seen by the witness and the person who had held sword on the neck of Ramakant was also seen by the witnesses. The evidence of the witness further suggests that in the identification parade on 17-6-1993 he identified accused No (2) Hari Narvekar, No.(9) Dilip Uttekar, No. (11) Viay Sapkal, No.(12) Srirang Korde, No.(14) Ashok Parmar, No.(15) Anwarhusain @ Vicky and also identified these accused before the Court.

13. The last eye witness Security Guard PW-11 Ramakant Ratnakar Yadav states in his evidence that Raju Bhoi was working as driver of the fiat car of Dineshbhai; that on 22-5-1993 at about 7.15 p.m. Dinesh Pathak and Parimal Bhatt came in the car, got down outside the gate of the press and from wicket gate they went inside the compound. At that time a boy aged about 23-24 years talking with Pathak went with him. Thereafter the witness took his position as guard; that Bhatt held that boy who was having knife, which Raju Bhoi was trying to snatch. In the meantime 13-14 persons raising shouts 'kill....kill' opened the gate and came inside with weapons sword, samurai, stick, pipe, knife etc; that one assailant from those who came from outside dealt sword blow on one of the ears of Dineshbhai and on receiving the same Dineshbhai went towards passage. The witness does not know as to what happened inside thereafter. That some one from inside shouted send telephone, whereupon the witness lifted the receiver and one person held sword on the back of his neck threatening don't telephone otherwise his neck will be cut. At that time Niranjansingh Jat (PW-10) had gone for taking tea; that he returned hearing the shouts. Thereafter all the persons came out with their weapons shouting 'whoever comes against their boss Raju Risaldar will meet the same fate'. All these persons went towards Sadhananagar society. The evidence of the witness suggests that in the identification parade held on 17-6-1993 this witness identified accused No. (2) Hari Narvekar.

Thus, it will be seen from the evidence of eye witnesses that the prosecution version has been corroborated on all material particulars, including the identity of the assailants including those named by PW-9 in the Exh. 90 as he knew these assailants by their name, and those identified by PW- 7 & 9 in parade as well as before the Court. As seen above the incident took place at about 7.15 p.m. PW-9 accompanied Dinesh Pathak to SSG hospital from the place of incident, he was treated by the doctor for the injuries received by him and gave complaint after about an hour of the incident and the offence is registered at 10.05 p.m. in Karelibaug Police Station. Thus it would be seen that the FIR was promptly given. The complainant was all throughout in the hospital and detailed FIR was given without wasting time. From all these, it can be said that, there was no time for addition, manipulation or concoction in the complaint exh-90.

14. As seen above PW-9 and 7 are shown to be present at the place of incident and have not only witnessed the

incident but also sustained injuries while trying to snatch knife from the first assailant accused No.12. As far as the accused identified in the incident and named in the complaint exhibit-90 by PW-9 are concerned, there can be no reason not to believe PW-9 since his presence is not only natural under the circumstances suggested from the evidence but also he having received injury in the incident. As seen above, PW-9 not only identified assailants named in Exh. 90 before the Court but has also identified others present in the incident in parade as well as before the Court. PW-7 Parimal Bhatt has also identified accused No. (4) Raju Shanabhai Thakore, accused No.(8) Jayanti Babubhai Rajput, accused No.(9) Dilip Vadavrav Uttekar, accused No.(10) Rajesh Sakaram Dighe, accused No.(12) Shrirang @ Bandu Korde, accused No.(14) Ashok @ Badshah Dahyabhai Parmar and accused No.(15) Anwarhusein @ Vicky; during the incident and all these assailants have also been identified by PW-7 in the parade as well as before the Court. It is also sufficiently proved from the evidence of PW-7 that, first assailant who dealt knife blow in the chest of Dinesh Pathak was accused No.12 and has also been identified in the identification parade. It may be appreciated that, this accused No.12 who managed to get entry inside the press premises telling Dineshbhai that he has applied for job and recommendation from Dineshbhai would help him get the job and all throughout out PW-7 was present with Dinesh Pathak as disclosed from the evidence. The evidence of PW-7 at the same time suggests that in the previous statement he did not name the assailants as having seen in the incident but out of the the remaining 9-10 assailants he had seen some of the assailants and he would be able to identify them if shown to him. As pointed out above, in the identification parade as well as before the court PW-7 has identified accused No. 4. 8, 9, 10, 12, 14 and 15. PW-7 has also identified accused No.1, 2, 3, 7, 16 in the Court as having seen in the incident. It is pertinent to note that it is not the say of the defence that any of the accused persons has the enmity with either PW-7 or 9. Now simply because PW-7 and 9 are connected with the deceased, that by itself would not render the testimony of these witnesses untrustworthy or unreliable. Having cautiously and carefully scrutinised the evidence of PW-7 and 9, we are of the opinion that the testimony of PW-7 and 9 is absolutely trustworthy and reliable. None of these witnesses have any axe to grind against any of the accused persons. Their presence in the incident is sufficiently established as pointed out above which is supported by the evidence of PW-8, 10 and 11.

15. In the complaint exh. 90 accused No.(1) Dilip Talaji Thakore, accused No. (2) Hari Tukaram Narvekar, accused No.(3) Raju Shivajirao Pawar, accused No. (7) Dinesh @ Mahendrabhai Solanki and accused No. (16) Shyam Sadashiv Saleskar have been named and they were also identified before the Court by PW-9. It is pertinent to note that PW-9 has not been cross examined, as to how he knew the names of accused No. 1-3, 7 and 16 before the incident. The evidence of PW-7 , 8, 9 and 10 disclose they having identified the appellant accused in the identification parade held on 17-6-1993 and also identified before the Court.

16. According to the prosecution, test identification parade was held in presence of panchas No. (1) Jagdish Ramanlal Kahar and (2) Nitin Chatrasinh Rajput by the Executive Magistrate, Vadodara on 17-6-1993 for the identification of accused in the case of Dinesh Pathak murder case and for which prosecution witnesses were called. Yadi sent by Executive Magistrate Chandrakant Kesurbhai Patel to Karelibaug Police station on 15-6-1993 for arranging a parade on 17-6-1993 at 8.00 a.m. in the office of Executive Magistrate, Narmada Bhuvan, Vadodara. Exh.163 (PW-48) is the evidence of Executive Magistrate Chandrakant Kesurbhai Patel for holding identification parade. It is suggested from the evidence of PW-48 Executive Magistrate, Vadodara Chandrakant Kesuarbhai Patel that, pursuant to the yadi exh. 164, he arranged identification parade on 17-9-1993 at 8.00 O' clock in his office; that personal staff was sent for calling dummies of same age group and appearance resembling the accused and in all 52 dummies were brought for the purpose of identification parade. All were made to stand in queue of "U" shape; that two persons (1) Jagdishbhai Kahar and (2) Nitinbhai Rajput acted as panchas; that in the parade witness Rajubhai Bhoi identified 7 accused; that all the 7 accused identified by Raju Bhoi were noted in the panchnama. Thereafter Raju Bhoi was sent out with panch No.2 Nitinbhai; that thereafter witness Parimal Bhatt was called through panch no.1 Jagdishbhai; that Parimal Bhatt identified 7 accused persons, their names and age were asked and the same were noted down in the panchnama. Thereafter Parimal Bhatt was sent out with panch no.2 Nitinbhai. Thereafter witness Pravinsinh was called through panch no.1 Jagdishbhai. Pravinsinh identified 5 accused persons from 'U' shape queue of dummy persons; that the names of these accused persons were noted down in the panchnama, thereafter Pravinsinh was sent out with panch no.2 Nitinbhai. Thereafter through panch no.2 Nitinbhai, witness Niranjansingh Jat was called in the identification parade room.

Niranjansingh was asked to identify the accused persons from 'U' shape queue of dummies and six accused were identified, their names were noted down in the panchnama and Niranjansinh was sent out with panch Nitinbhai; that thereafter witness Ramakant Yadav was called through panch No.1 Jagdishbhai Kahar. Ramakant Yadav identified one accused, his name was noted in the panchnama and Ramakant was sent out with panch no.2 Nitinbhai.

It is suggested from the evidence of PW-55 panch Jagdish Ramanlal Kahar; that on 17-6-1993 he was called as one of the panchas in the office of Mamlatdar, Narmada Bhuvan for remaining as a panch in the identification parade of the accused in the Dinesh Pathak Murder Case. Nitinbhai Rajput was the other panch; that the Mamlatdar had told the accused persons to stand whereever they wanted to stand in the queue and they were also told to exchange their clothes if they so desired. Thereafter another panch Nitinbhai brought complainant Raju Bhoi who was told that he may point out the accused of Dinesh Pathak murder case. Thereafter Raju Bhoi identified 7 accused person, names of these 7 persons were asked by Mamlatdar and the same were noted down in the panchnama. Thereafter Raju Bhoi was sent out; that thereafter Parimal Bhatt was called through peon. At that point of time other panch Nitinbhai was sitting in the hall. Parimal Bhatt was asked to identify the accused persons from the dummies by the Mamlatdar whereupon Parimal Bhatt identified 7 accused persons from the queue of dummies, names of 7 accused persons were asked and noted down in the panchnama; thereafter Parimal Bhatt was sent out through panch Nitinbhai; that thereafter witness Pravinsinh was called through panch Nitinbhai. Pravinsinh was asked to identify the accused persons from the row of dummies whereupon Pravinsinh identified 5 accused persons, whose names were asked and noted in the panchnama by the Mamlatdar and Pravinsinh was sent out with panch Nitinbhai. Thereafter Nitinbhai remained outside, at that time panch Jagdishbhai was in the room; that Mamlatdar asked accused persons to change their clothes if they wanted to and stand in the queue at the place they liked. Same was also noted in the panchnama. Thereafter through panch Nitinbhai witness Niranjansingh Jat was called and Niranjansingh Jat was told by Mamlatdar to identify the accused if he can from the line of dummies, whereupon Niranjansingh Jat identified six accused persons whose names were asked and then noted down. Thereafter Niranjansingh Jat was sent out with panch Nitinkumar. Thereafter witness Ramakant Yadav was called and was asked to identify the accused of Dinesh Pathak Murder Case if he can; whereupon Ramakant Yadav

identified one accused person from the line of dummies whose name was asked and noted in the panchnama. Then the witness was sent out with panch Nitinkumar. Witness Kishan Ramchandra Kumkar was asked to identify accused persons of Dinesh Pathak Murder Case, whereupon witness Kishan identified one accused whose name was asked and noted down in the panchnama. The other witnesses called could not identify accused person in the parade which is also noted in the panchnama. The witness has identified his signature on each page of the panchnama and also at the bottom of the panchnama; that after the identification parade of accused persons was over, they were handed over to P.I. Kanani. The witness has proved the identification parade held vide exh. 165.

It may be seen that complainant PW-9 Raju Bhoi in his complaint exhibit-90 in the incident identified and named accused No.(1) Dilip Talaji Thakore,accused No.(2) Hari Tukaram Narvekar, accused No.(3) Raju @ Balkrishna Shivajirao Pawar, accused No.(7) Dinesh @ Mahendrabhai Solanki, accused No.(16) Shyam Sadashiv Saleskar and also identified accused No. 1-3, 7 & 16 before the Court. In the T.I. Parade before the Executive Magistrate and in the Court PW-9 has identified accused No.(4) Raju Shanabhai Thakore, accused No.(8) Jayanti Babubhai Rajput, accused No. (9) Dilip Vadavrav Uttekar, accused No.(12) Shrirang @ Bandu Anani Korde, accused No.(13) Babu Shyamji Makwana, accused No. (15) Anwarhusein Vicky Shaikh, No. (14) Ashok @ Badshah Dayabhai Parmar. P.W-7 in the T.I. Parade has identified accused No.(4) Raju Shanabhai Thakore, accused No. (10) Rajesh Sakaram Dighe, accused No.(9) Dilip Uttekar, accused no. (11) Vijay Ganpatrav Sapkal, accused No. (14) Ashok @ Badshah Parmar, accused No. (15) Anwarhusein @ Vicky. In the substantive evidence before the Court P.W-7 has also identified accused No. 1, 2, 3,4 and 5, whereas accused No.10 Rajesh @ Raja Sakaram Dighe was identified as accused No.16 Shyam Sadashiv Saleskar. Accused No. 7, 8, 9, 13, 14 and 15 are also identified by this witness.

17. It is suggested from exh. 165 that P.W- 9 complainant over & above identifying accused No. 1 to 3, 7 & 16 named in the complaint exh. 90, has identified accused No. 1 to 3, 7 & 16 in his substantive evidence before the Court. Over & above these accused persons P.W. 9 also identified accused persons in identification parade vide exh. 165 and they are accused No.(4) Raju Shanabhai Thakore, accused No.(8) Jayanti Babubhai Rajput, accused No.(9) Dilip Uttekar, accused No.(12) Shrirang @ Bandu Anani Korde, accused No.(13) Babu Shyamji Makwana, accused No.(14) Ashok Dayabhai Parmar

and accused No. (15) Anwarhusein @ Vicky, and also identified them before the Court.

As seen above evidence of P.W-8 suggests that this witness identified accused No. 7, 9, 11, 13 & 15 in the Court. In T.I. Parade panchnama exh. 165 PW-8 is stated to have identified accused no.(7) Dinesh Mahendrabhai Solanki, accused no.(9) Dilip Uttekar, accused no.(11) Vijay Sapkal, accused no.(13) Babu Shyamji Makwana, accused No.(15) Anwarhusein @ Vicky. Thus PW-8 in T.I. Parade exh. 165 and before the Court identified accused No. 7, 9, 11, 13 and 15.

18. PW-10 in his evidence identified accused No. 2, 9, 11, 12, 14 and 15. In the identification parade vide panchnama exh. 165, PW-10 is said to have identified accused No. (2) Hari Tukaram Narvekar, (9) Dilip Uttekar accused No.(11) Vijay Sapkal, accused No. (12) Shrirang @ Bandu Korde. (14) Ashok @ Badshah Parmar, accused No. (15) Anwarhusein @ Vicky.

19. The evidence of PW-11 Ramakant Ratnagar Yadav (exh.92) suggests that, in the identification parade as well as before the Court the witness has identified accused No. (2) Hari Tukaram Narvekar, who is also identified by other prosecution witnesses.

Thus it would be seen from the evidence of PW-7, 8, 9 and 10, and the evidence of PW-48 Chandrakant Kesurbhai, PW-55 Jagdishbhai Kahar, and identification parade panchnama exh. 165; the identify of accused No. 1,2, 3, 4, 7, 8, 9, 11, 12, 13, 14, 15 and 16 in the incident is clearly established.

20. As far as injuries to accused no.11 and 12 are concerned, the evidence of PW-1 Dr. Jaydeep Nikhilkumar Pandya (exh. 73) suggests that on 22-5-1993 at about 9.00 O' clock in the night 3 persons came to his "Deep Clinic"; that 2 persons had sustained injuries, that one person who gave his name as Srirang Brahmin had sustained fracture injury of the left hand thump with cut injury on left hand; that he advised that patient to go to orthopaedic surgeon; that on inquiry Shrirang Brahmin said that the injury was because of the accident of the rickshaw with his motorcycle; that preliminary treatment was given and bandage was applied at injury site by the witness; that the other person who gave his name as Vijay Sapkal had incised wound on left hand first finger and inner portion and was also given treatment of titanous and his wound was sutured. The witness has identified both these accused, i.e. accused No. 11 and 12 in his evidence before the Court.

The evidence of PW-2 Dr. Trushaben Rajesh Krishnakant Baxi (exh.75) suggests that on 22-5-1993 around 9.15 p.m. 2 persons came to her dispensary. One of him had injury on the left hand palm. The witness has examined; that the wound was open; that bandage was applied to stop bleeding; that the wound was cut injury which was bone deep; witness being a gyneacologist it was not her subject, she referred the patient to Dr. J.M. Dave and informed Dr. Dave on phone that she had not asked the name and particulars of the patient but she can identify the patient who had come to her. Then the witness has identified accused No. (12) Shrirang Korde in her evidence.

The evidence of PW-3 Dr. Jyotindrakumar Manilal Dave (exh.76) suggests that on 22-5-1993 around 9.00 to 9.30 p.m. the witness received telephone from Dr. Trushaben Baxi (PW-2)from the place of her friend Dr. Shashikant and the witness was told that Dr. Shashikant is not available, one surgical patient has been referred to the witness as she was told by Dr. Shashikant to refer the surgical patient if any, to the witness. After 1 1/2 hrs the patient accompanied by one boy with a note of Dr. Trushaben Baxi came; that the patient had sustained injury on the left hand thumb and the wound was dressed and bandage applied. On inquiry about the cause of injury, the patient told that when he was going on scooter, scooter dashed with rickshaw and the iron sheet of the body of the rickshaw caused the injury. the witness suspected fracture and told the patient that x-ray will have to be taken and opinion of Orthopaedic surgeon will have to be taken; that thereafter the patient was referred to Orthopaedic surgeon; that the witness himself took the patient to the clinic of Orthopaedic surgeon and got the x-ray by an attendant. Facture was revealed, the patient was referred to a Plastic Surgeon and was sent to SSG hospital with a note to Dr. Ashokbhai. Thereafter the patient left. The witness has identified accused No.12 as the patient who had sustained facture injury and accused No. 11 who had accompanied the injured accused no.12.

PW-4 (exh.77) Dr. Ashok Maganbhai Patel has stated in his evidence that on 22-5-1993 at about 10.45 p.m. Dr. Jyotindra Dave of Mahalaxmi Surgical Hospital had telephoned the witness and told that one person has injury on left hand. The witness told Dr. Dave to come to his hospital and get the x-ray taken. Thereafter witness came to his hospital and another x-ray was taken; that the bandage was removed and on the left hand between

1st and 2nd metacerple bold # was found on the left hand thump and the left hand thump was cut; that the patient was referred to plastic surgeon as the plastic surgery was found necessary; that the patient was referred to SSG hospital with x-ray plate and a note given by the witness; that the patient gave his name as Shrirang Korde. The witness identified accused no. 12 as Shrirang Korde in his evidence.

PW-5 Dr. Shailesh Jivanbhai Parikh (exh.79) suggests that on 23-5-1998 at about 9.30 p.m. when he was at the place of his relation he received a telephone from office ward boy and was told that one person having injury on his hand has come with x-ray plate whereupon the witness rushed to his hospital and saw the patient. The witness was told that the injured has sustained injury with axe at village Kandari in the morning while cutting log of wood and so witness was approached for treatment. The patient gave his name as Srirang Korde who had a dressed wound with bandage in left hand palm. The witness also read the x-ray plate with which the witness had come. On the next day morning i.e. 24-5-1993 at about 6.00 O' clock surgery was performed on patent at the injury site and witness was paid Rs.3700/by maternal uncle of the patient; that the wound of the patient was 15 to 20 hours old when the witness examined the patient in the evening of 23-5-2003. The witness has identified the patient whom he treated as Shrirang Korde as accused No. 12 in his substantive evidence before the Court.

Thus, it would be seen that accused no. 11 & 12 went to the doctors for their injuries. Accused No. 12 had suffered fracture injury and both these accused have been identified by PW-1 to 5 in their substantive evidence before the Court as the patients treated by them respectively.

21. It is also suggested that PW-12 had fracture injury and on inquiry the accused told PW-1 that he had met with an accident by rickshaw and he was on the motorcycle. Thereafter accused no. 12 went to PW - 2,3, 4 and 5 as advised by this witness and surgical operation was performed by PW-5 on accused 12 on 24-5-1993. PW-5 has also produced the consent letter exh. 80 for performing surgery on accused No.12 by maternal uncle Mr. B.K. Bhodke and on 26-5-1993 accused no.12 was discharged by PW no.5. It may be appreciated that all what the prosecution is required to prove is the guilt of the accused no.11 & 12 beyond reasonable doubt. As seen above the evidence of PW-7 and 9 together with evidence

of PW-48, 55 and TI Parade panchnama exh.165 sufficiently establish the involvement of accused No.11 & 12 beyond all reasonable doubts and therefore, the question of prosecution explaining the injuries on the person of accused No. 11 & 12 would not assume importance. It may hardly be said that when the prosecution has come out with a definite case that the offence has been committed by the accused and when the allegation is proved on evidence, it becomes hardly necessary for the prosecution to again explain how and in what circumstances minor injures are found on the person of the accused. It may be appreciated that, it is not the say of the accused no. 11 & 12 that how they received the injuries. Now when the accused themselves do not urge on the injuries found on them and do not in any manner connect receipt of the injuries to the occurrence the question of explaining the same by the prosecution pales into insignificance.

22. Challenging the identification of the accused in T.I. Parade (exh.165) and in the substantive evidence before the Court, one of the arguments advanced on behalf of the defence is that the description i.e. height, age, complexion, features etc. have not been given by the prosecution witnesses either in complaint exh. 90 or previous statements and that, there is no basis for PW-48 to call for the dummies of a particular age, height, appearance, complexion etc. In exh. 90 the complainant as noted above, out of 14-15 assailants in the incident, names of accused no.1 to 3, 7 & 16, have been mentioned. It is pertinent to note that all these assailants are stated to be the residents of area called "Bordi Falia". It is also stated in the exh. 90 that the first assailant was aged about 24-25 years with some curly hair with black thread tied on his right hand, who was in the beginning talking in Gujarati. The other 5 persons who had rushed in the press were having sword, samurai, gupti and other 3 persons having gupti in their hands and majority of the assailants appeared to be of the age group of 24-30 years. Exh. 165 panchnama of identification parade suggests that except dummies No: 3, 14, 33, 35, and 37 rest are in the age group of 18 to 35 years. It may be appreciated that the age given in the complaint exh. 90 would be approximate on the basis of the impression on seeing the assailants in the incident and looking to the nature and manner of incident age cannot be given with precision. It is a settled legal position that the minor defects (infirmities) in the identification parade will not render the identification parade illegal nor evidence of the witnesses, which is otherwise reliable, trustworthy, cannot have any adverse effect on the identification of

the accused persons in the parade. Even if the identification parade is not arranged for any reason that by itself cannot render the evidence of the eye witness to the occurrence untrustworthy/ unreliable simply because the accused are identified only in the Court. All what is required is that the Court should be satisfied about the identity of the accused in the incident. It may be seen that the defence has not been able to show from the evidence that they are prejudiced in any manner.

23. Another limb of argument advanced on behalf of the defence challenging the identification parade is that the accused persons were arrested on 3-6-1993 and the test identification parade has been arranged on 17-6-1993 and the identification parade cannot be accepted for the delay in holding the same. In this regard on behalf of the defence circular issued by the Government of Gujarat produced with list exh. 232 providing guidelines for holding identification parade has been relied upon. The circular which is with list exh.232 on the record of this case has also been referred to in the judgment in the case of ABBAS HASAN GANCHI Vs. STATE OF GUJARAT 1993 (1) GLH PG. 33. At page 41 the Circular No. CPM-MS-MAG-20/1955 on the subject of holding identification parade has been reproduced. It is provided therein that the Magistrate should acquaint the witnesses briefly with the facts of the case and as to who is told to be identified, who are to come for identification. The circular also provides for the number of persons required to be kept in parade depending on the number of accused persons to be identified. In substance the circular provides for the care to be taken and procedure to be followed through out the test identification parade. The Division Bench at page-38 has reproduced Rule-181 of the Gujarat Police Manual Vol. III which deals with the holding of identification parade. Sub clause (h) of clause (1) of Rule 181 provides that holding of piecemeal identification parade is deprecated. At the same time delay mars its sanctity.

Thus it would be seen that when there are more than one accused to be identified, then, there should not be piecemeal identification parade of the persons suspected of a crime but at the same time there should be no delay in holding the parade. In the instant case accused persons as suggested from the evidence of record started surrendering on 3-6-1993 and onwards and as per the evidence of the I.O. the last accused surrendered in the late evening of 10-6-1993. It is stated that till 15th some further investigation was carried out, on

15-6-1993 intimation exh. 164 was written to the Executive Magistrate for arranging the identification parade and on 17-6-1993 the parade was arranged. In our opinion, when the accused started surrendering from 3-6-1993 and the same continued till the late evening of 10-6-1993 and the investigation agency was busy with the investigation, it cannot be said that the identification parade was delayed, keeping in view the requirements of sub clause (1) of clause (h) of Rule 181 of the Gujarat Police Manual referred to above.

In the case of RAMANAND RAMNATH VS. STATE OF M.P. 1996 SCC (Cri.) pg. 684, the Supreme Court held that where the accused was arrested on 29-8-1981 and T.I. Parade held on 14-9-1981, there was no unusual delay in holding the Test Identification Parade.

In the decision in the case of case of RAJESH GOVIND JAGESHA VS. STATE OF MAHARASHTRA & OTHERS, (1999) 8 SCC pg. 428, Supreme Court held that the T.I. Parade held vitiated on account of not having been conducted proper and also on account of unexplained delay and non inclusion of a person other than the accused having resemblance with the person mentioned in the FIR. In the said case the T.I. Parade was held on 24th day of the arrest of the accused. In the present case the T.I. Parade is held on 7th day of the surrender of the last accused and therefore it cannot be said that the holding of T.I. Parade was unduly delayed. It may also be noted that it is not the say of the defence that the persons included in the parade, otherthan the accused, did not resemble the accused persons.

24. In the instant case evidence does not disclose that the accused were seen by the witnesses before the TI parade held on 17-6-1993, when the accused were in the police custody or before the accused were identified in the parade by the witnesses. It satisfactorily suggested from evidence that all precautions and care as laid down in the case of Abbas Hasan (supra) have to be taken by the Executive Magistrate before and at the time of holding the TI parade. As seen above it is suggested from the above evidence of PW-48, PW-55 and Exh.165 that, 52 dummies of the age group of 18-35 were kept present in the T.I. parade. It is also suggested from the above evidence that police personnel were totally kept away and the accused were called one after another by changing the panch, i.e. not by the same panch successively. It is also suggested from the evidence that care has also taken to see that before and during the parade the witnesses may not see the accused persons and for that they were

kept at different places where the accused could not be seen by the witnesses. The evidence also discloses that the accused were permitted to exchange their clothes interse if they so desired. Thus in our opinion, the evidence discloses the compliance with the requirements for holding TI parade as laid down in the case of ABBAS HASSAN (supra). The defence has not been able to point out from the evidence that for the purpose of holding TI parade police help was taken or that the parade was arranged in the presence of the police personnel or that the accused were seen by the witnesses before and during their identification in the parade.

We do not find any substance in the submission advanced on behalf of the defence that the photographs of the accused published in the edition of 18-6-2003 in local daily newspaper Sandesh would make the parade doubtful or unreliable and has prejudiced the accused in any manner. It may be seen that the T.I. parade was held on 17-6-1993 and the photographs of the accused as per the defence were published in the edition of 18-6-1993 in the local daily Sandesh. Publication of photographs in the local edition of Sandesh on 18-6-1993 can have no bearing on the identification of the accused person in the T.I. parade held on 17-6-1993 since the photographs were published after the accused were identified by the witnesses in the parade held on previous day. In our opinion the TI parade held on 17-6-2003 and the identification of the accused by the witnesses as per the panchnama exh. 165 cannot be faulted.

25. It is a settled proposition of law that in case of direct evidence motive for committing crime is not relevant. However, according to the prosecution, the motive for committing murder of Dinesh Pathak is that Raju Risaldar was the President of Shiv Sena,Baroda unit and was indulging in criminal activities and used to professionally liquidate the persons, getting the properties vacated by illegally resorting to giving threats, assaulting persons concerned etc. Deceased Dinesh Pathak used to publish illegal/ criminal activities of Raju Risaldar in local daily Sandesh which was not liked by Raju Risaldar and for that Raju Risaldar used to give threats to Dinesh Pathak. Dinesh Pathak did not succumb to the threats given by Raju Risaldar and continued boldly publishing criminal activities of Raju Risaldar in daily Sandesh; that in the year 1992 during Navratri festival Garba was arranged in Ellora Park area called "Arki Garba" organised by Nitin Sandesara of Bombay. Raju Risaldar had threatened the organizers

whereupon the organizers had cancelled organizing the Garba. Subsequently Garba was arranged and Raju Risaldar had inaugurated the Garba festival and in his inauguration speech Raju Risaldar said that " Snake has gone but the marks are left and the marks also will be removed". In the said speech he referred to local Congress leader Ashok Bhogi as the snake who was murdered some time back and as the marks remaining he referred to the names of three persons, namely Dinesh Pathak, Ashwin Shah President of Baroda District Congress (I), and Maulin Vaishnav, General Secretary of Gujarat Pradesh Congress (I). Thus Raju Risaldar in his inaugural public speech had threatened Dinesh Pathak and two others suggesting that these persons also would be removed like Ashok Bhogi.

26. PW-32 Ashwin Chimanlal Shah in his evidence suggested that he is a practicing advocate since last 20-22 years and since last 2 1/2 years he has been the President of Baroda District Congress (I); that Maulin Vaishnav is the General Secretary of Gujarat Pradesh Congress Committee; that witness did not know Raju Risaldar personally but knew him by his name as President of Baroda City Shiv Sena; that in 1992 on Navratri days Gujarat Government had decided to arrange Garba festival and in different areas Garbas were arranged; that in Baroda city near Atma Jyoti Ashram in Ellora Park ground Garba was arranged on a big scale called Arki Garba and the same was organized by Nitin Sandesara; that there was great pressure for passes to see Garba and for erecting stalls, and as the pressure had mounted considerably the organizers decided to postpone arranging of Garba; that subsequently Arki Garba was organized and the Garba festival was inaugurated by Raju Risaldar; that the witness read in the newspaper that Raju Risaldar in his inaugural speech had said 'Snake has gone but the marks are remaining'. During the speech Raju Risaldar had referred to three persons i.e. this witness (Ashwin Shah) Dinesh Pathak and Maulin Vaishnav; that Raju Risaldar had compared these three persons with Duryodana, Dusasana and Sakuni and also stated that the snake i.e. Ashok Bhogi has died and these three marks would also go. Thereafter the witness was provided police protection.

27. The evidence of PW-60 PSI Ghirsinh Govindsinh suggests that the site/ place of Arki Garba fell within the jurisdiction of Gorwa police station where the witness was working as PSI ; that opposite to Atmajyoti Ashram in the open ground of Municipal Corporation Arki Garba was organized by Nitin Sandesara, an industrialist of Bombay in the year 1992; that Raju Risaldar had

inaugurated Garba festival; and in his inaugural public speech he had stated that last year near railway station snake died and three marks are left and referred to Ashwin Shah, Maulin Vaishnav and Dinesh Pathak as the three marks; that Ashok Bhogi was referred as the snake.

Nothing substantial has been brought from the cross examination of PW-32 or PW-60 so as to render their evidence unworthy of reliance. The evidence of PW-32 and PW-60 clearly suggests that prior to the occurrence of 22-5-1993 during Navratri days in 1992 Raju Risaldar had publicly threatened Dinesh Pathak, PW-32 Ashwin Shah and Maulin Vaishnav. There is absolutely no reason not to believe these two witnesses on the motive behind the murder of Dinesh Pathak on 22-5-1993 by the accused who are on record suggested to be the members of local unit of Shiv Sena with Raju Risaldar as the President.

28. The prosecution has examined PW-14, 15, 16, 17, 18, 22, 23, 24, 25, 26, 27 and 28 for the conduct of the accused persons before and after the incident.

The evidence of PW-15 Ranjitsinh Motisinh Gohil suggests that on 22-5-1993 at about 8.00 O' clock in the evening when he was sitting on his pan galla, at that time accused No. 10 came on the scooter, followed by one rickshaw carrying accused no. 11 who said the witness that there are 2-3 weapons in his rickshaw which may be kept by the witnesses. The witness declined to keep the weapons saying that he is a person with family. Thereafter PW-11 went away.

The evidence of PW-14 Kishorbhai Ramnarayan Uttekar suggests that on 22-5-1993 at about 8.30 O' clock in the evening accused no. 11 Vijay Sapkal came to his house accompanied by accused No. 12 Shrirang Korde, accused No. 10 Rajaram Dighe in an auto rickshaw and told the witness that quarrel has taken place and also asked the witness to keep 3 weapons which they were having with them. Thereafter one sword, and two knives (Khanjar) were taken out from beneath the seat of autorickshaw by accused No. 11 and given to the witness; that the sword was in red colour cover, knives weer also in cover; that accused No.12 had injury on the hand and bandage was applied on it. The weapons were kept in a tank on the terrace of the adjoining house of the witness. At about 11.00 O' clock in the night again one rickshaw came to the house of the witness. Suspecting that the same rickshaw has come the witness came out and saw accused No. 11 in the rickshaw who asked for a pair of clothes as his clothes were blood stained, also

telling the witness to get his clothes washed by the wife of the witness. Whereupon the witness gave clothes to accused No.11 and accused No.11 changed his clothes. Accused No.11 told the witness to keep his rickshaw but the witness asked him to take back the rickshaw with him. Thereafter accused no. 11 went away with the rickshaw. The witness told his wife that accused party had come again and taken clothes of the witness, giving his clothes for washing which were washed by wife of the accused on that very night; that the weapons which were put in the tank on the terrace of the adjoining house were brought in the house of the witness which were later on washed and kept in the cellar of the house. On the next day the weapons were taken back by Rajaram Dighe, Dilip Uttekar and Jayanti. The witness in his evidence has identified the weapons shown to him as muddamal and stated that these are like the weapons kept at his place.

The evidence of PW-18 Bharat Dilipsinh Gaekwad suggests that in the night of 22-5-1993 at about 0.45 hours on the say of accused no.11 the witness had gone to Hemant More for taking taxi. In the taxi witness, accused No. 11 , 12 , Sanni Tiwari and driver Hemant More started for Ahmedabad. On the say of accused No.12 the taxi was taken to Anand at the place of Minesh Chimanlal Patel. Next day Minesh Patel went to inquire about doctor but as no doctor was available Minesh Patel returned with newspaper 'Loksatta' which contained news item of murder of Dinesh Pathak. Witness suspected that these accused have taken some part in this. On asking accused No.11 & 12 denied the same. The taxi driver Hemant told accused No. 11 & 12 that he would leave them at Anand Railway Station but accused No. 11 & 12 did not agree whereupon the driver took the taxi to Ahmedabad.

The evidence of PW-16 Hemant Baburao More suggests that in the night intervening 22-5-1993 and 23-5-1993 at about 1.30 a.m. Bharat Gaekwad and Sanni Tiwari had come to the witness and asked whether his taxi is available. Whereupon Bharat Gaekwad asked the witness to take taxi towards Ahmedabad. Thereafter along with Sanni Tiwari the witness came to Varasiya, at that time witness saw injury on the hand of accused No.12 and asked Bharat Gaekwad about the same and accused No.12 said quarrel had taken place. Thereafter along with Sanni Tiwari and Bharat Gaekwad, taking accused 11 & 12 the taxi went towards Ahmedabad. Near Chikodara crossing accused No. 12 asked the witness to take the taxi to Anand and then they came to Anand. Accused No.12 went to the house of Minesh Chimanlal Patel and told him that, he has to go to an orthopaedic surgeon whereupon Minesh

Patel said that no doctor would be available at this hour. Thereafter accused No.12 asked Minesh Patel to bring newspaper of Baroda and the witness returned with daily 'Loksatta' of Baroda and also told accused No.12 that doctor has gone out and cannot be contacted for 2-3 days. Accused No.12 read newspaper Loksatta containing headline news of murder of Dinesh Pathak. Thereafter the witness asked accused party to relieve him whereupon witness was told to take them to Ahmedabad and threatened him that, if he did not take them to Ahmedabad witness would be trapped. On the next day about 6.00 O' clock they started for going to Ahmedabad and inquired about 2-3 doctors but because of Sunday doctors were not available. Thereafter the witness declined to go further and at about 2.00 O' clock in the noon they left Ahmedabad for coming back to Baroda and accused No. 11 asked the witness to leave him at Subhanpura area whereas Sanny Tiwari and Bharat Gaekwad were dropped at Amitnagar Circle on VIP road; that accused no.13 paid Rs.500/- as taxi fare. This witness has identified accused No. 11 and 12 in the Court.

The evidence of PW-17 Mineshkumar Chimanlal suggests that in the early hours of 23-5-1993 accused no.12 and 3 other persons including driver, in all 4 persons had come to him. Accused No.12 told the witness that quarrel has taken place and his left hand is injured by sword and also told witness that orthopaedic surgery is needed. Witness told accused no. 12 that arrangement for doctor can be made tomorrow. At about 7.00 O' clock in the morning the witness was asked to bring newspaper published from Baroda whereupon the witness brought 'Loksatta' published from Baroda and gave it to accused No.12, thereafter those persons were talking with each other interse. Accused No.12 had changed his shirt at the place of the witnesses.

Evidence of PW-22 Hemant Pandurang Karode suggests that on 22-5-1993 around 10.00 O' clock in the evening Raju Thakore (accused No.4) and Dipak came to the witness in auto rickshaw. After 10-15 minutes Hari Narvekar and Raju Pawar (accused No.2 & 3) came on foot. All of them were talking interse. Accused No.2 had asked for scooter from Om Prakash Chauhan who was staying in block no.5. Scooter was given thereafter. Hari Narvekar and Dipak left on the scooter and returned within 1/2 hour. Thereafter Hari Navrekar, Raju Pawar, Raju Thakore and Dipak went to the house of Hemant to sleep. On the next day at about 11.00 O' clock in the morning witness met and asked Raju Salunke whether they have gone, whereupon the witness was told that they are in their

house. Thereafter witness told Raju Salunke that anyhow these people must be removed from the house. Thereafter at about 3.30 O' clock witness came to his house and found that these persons had left.

Evidence of PW-23 Nivruti Pundlik Chauhan suggests that on 23-5-1993 at about 7.30 O' clock in the evening he returned home and was told by his younger brother Om Prakash that Hari Navrekar, Raju Pawar and Raju Thakore had come to their house in the noon and had stayed in the house of the witness taking key from his mother. Whereupon the witness came to accused No.2 Hari Navrekar and told him as to why his name was falsely given for taking key of his house. Witness has further stated that as the names of the boys of Wadi area were discussed he had asked Hari Navrekear, Raju Pawar and Raju Thakore to go away but they had told him that they would go away in the morning. Thereafter on the the next day at about 7.30 O' clock in the evening he learnt that the accused had left the house; that on 6-6-1993 police had come to the house of the witness for recovery of the clothes of Raju Pawar. The witness has identified accused No.2, 3 and accused No.4 in his evidence.

Evidence of PW-24 Shirish Sukhdev Salunke suggests that he had gone to the house of Nivruti Chauhan and had asked Hari Navrekar, Raju Pawar and Raju Thakore to go away. Whereupon all these 3 persons had asked the witness to arrange for taxi and the fare, whereupon witness paid Rs.2500/- to Hari Narvekar and got taxi from Nyay Mandir. That these 3 persons had fixed fare of Rs.300/- for going to Bharuch and left in the taxi. The witness has identified accused No. 2, 3 & 4 .

The evidence of PW-25 Jaswantbhai @ Guru Bhavskar suggests that on 23-5-1993 Hari Navrekar had asked for money whereupon the witness paid Rs.2000/- to Hari Navrekar. Thereafter he met Shirish Salunke and the witness told him to pay money to Hari Navrekar who is in need, whereupon Shirish Saluke gave Rs.2500/- to Hari Navrekar.

Evidence of PW-27 Ishwar Sitaram Santane suggests that he is working as driver of taxi bearing No: GRQ-9866 of one Jitubhai Panchal; that on 24-5-1993 as usual he had come to Nyay Mandir Taxi Stand with his taxi. At about 10.00 O' clock in the morning three persons asked him to take them to Bharuch. The witness demanded Rs.300/- as taxi fare. Thereafter the witness came with his taxi at Duttnagar society. 3 persons came there, two were fat and 3rd one was tall and thin. They

occupied the taxi, the witness took the taxi towards Bharuch and leaving these persons at Bharuch he returned to Baroda.

The evidence of PW-20 Ajay @ Aniyo @ Anju Kanubhai Solanki suggests that accused Dinesh Solanki is his cousin brother that he is the son of distantly related maternal uncle of the witness and he knew accused No. 15, 14, and 13. That all these three used to help Dinesh Solanki in the Municipal elections which was contested by Dinesh Solanki. It is further suggested that on 22-5-1993 he had gone to the house of his maternal uncle in Hathikhana area and was sitting near the laboratory. At that time at about 2.30 O' clock in the noon accused Dinesh Solanki, Anwarhusain @ Vicky, Ashok Parmar, Babu Makwana had come there; thereafter they had gone to the house of Dinesh Solanki; that these people took out the weapons and some puja was performed at the photograph of Goddess. These weapons were one knife (Khanjar) two knives and one gupti. Thereafter accused Dinesh Solanki gave Rs.30/- for filling patrol in his motorcycle. On that day evening at 5.30 to 6.00 O' clock when the witness was returning to his house in Nizampura. At that time near Arya Kanya Vidyalaya, Karelibaug, he saw Dinesh going on motor cycle.

29. It would be seen from the evidence of the above witnesses that before the occurrence the accused were preparing to fulfil the object of committing murder. The evidence further suggests that no sooner Dinesh Pathak was delivered deadly blows the assailants had ran away from the place of incident; that accused No. 11 & 12 went to the local doctors (PW-1 to 4) in the evening of 22-5-1993 and thereafter taking preliminary treatment left for Ahmedabad. Whereas accused No. 2, 3, and 4 went to the places of persons known to them. It is pertinent to note that though these three accused had their houses in Baroda, they preferred to stay over night at the place of Hemant Pandurang Karode PW-22.

Evidence of PW-53 Ushaben Bhanuprasad Patel suggest that she is working in Sarabhai Chemicals Ltd as Assistant Manager (Personnel & Administration); that Balwant S. Saleskar (accused No. 16) was employed in Sarabhai Chemicals, Vadodara from the muster roll she has stated that Saleskar did not report to duty w.e.f. 22-5-1993. P.W. No. 54 Mahesh Ramniklal Buch, Senior Chemist, GSFC Central Laboratory has stated in his evidence that Shrirang Korde (accused no.12) was working in the laboratory of the witness; that Shrirang had reported to duty till 21-5-1993 and thereafter he has

continuously remained absent. No report is received from him for the absence.

The evidence also disclosed that accused No.2, 3 and 4 left Baroda 25-5-1993 and stayed at Panvel. This fact is deposed by PW-59 Damyantiben Lahu Gyandev Dongre. According to the witness accused No.2 treats her as his maternal aunt. This witness also knows accused No.3 & 4 as friends of accused No.2 and on 25-5-1993 all these three persons had come to her house and stayed at her house for 4-5 days and also stated that they are the members of the Shiv Sena. Thus the evidence referred to above suggests that the motive, preparation and the conduct - previous and subsequent to the occurrence on the part of the accused persons.

30. One of the arguments advanced on behalf of the appellants-convicts is that, it is not believable that after receiving the first blow Dinesh Pathak would be able to stand and would keep standing and that he would not be able to cover the distance upto bathroom which is 108 ft. away as per the map exh. 172. According to PW-7 the first blow was dealt in the chest region of Dinesh Pathak by accused No.12. As per the evidence of PW-9 when he reached he saw PW-7 grappling with accused No.12 and Dinesh Pathak was standing. It may be appreciated that different people act differently in a given situation. More over according to PW-7, he saw accused No.12 taking out knife from his pocket when the witness jumped to save Dinesh Pathak but in the meantime the blow was dealt. It would be a fraction of second that blow was dealt and PW-7 jumped and on receiving the blow Dinesh Pathak did not immediately fell as blood is seen and one of the ears of Dinesh Pathak falling and lying with the stains of blood at the place when initial blows were dealt as per exh. 172. The first blow may not be necessarily on heart as the evidence is that first blow was dealt in chest. That apart, it cannot be said that the injured would not be found standing even for a fraction of a second on receipt of the blow. As far as covering distance of 108 ft. is concerned, the evidence discloses that as Dinesh Pathak could not climb stairs he went towards bath room and was chased by other assailants who in the meantime came and they were giving blows while Dinesh Pathak was running towards bathroom as suggested from exh. 172, so it is not that all the 89 blows were dealt at one place and that too at the place where first blow was dealt by accused No.12. The evidence shows that on receiving number of blows Dinesh Pathak fell near the bathroom. That means the acts of giving blows continued till Dinesh Pathak reached near the bathroom and fell

down there. For all these reasons we do not agree with the submission of the learned defence counsel that Dinesh Pathak could not have covered distance upto the bath room shown in the map exh. 172.

31. One of the arguments advanced on behalf of the defence is that, filing of the Report under section 157 of the Code is delayed and, that would also create doubt about the prosecution version. It may be appreciated that the incident took place at about 7.15 p.m. in the evening. The complaint exh. 90 which runs into more than 6 pages was given within one hour of the incident. The offence has been registered at 10.05 p.m. at Karelibaug police station. 22-5-1993 was a Saturday and the next day was Sunday - a holiday. The Report under section 157 of the Code has been received by Learned Judicial Magistrate at about 1.30 p.m. on Monday 24-5-2003. Considering Sunday being an intervening weekly holiday, the sending of the Report on 24-5-1993 cannot be faulted, and it cannot be said that sending of the Report under section 157 of the Code was in any manner delayed.

32. As seen above, the prosecution evidence suggests that, in the incident there were 13-14 assailants who attacked Dinesh Pathak, possessing lethal weapons in the said incident. PW-7 & 9 also received injuries in the incident as seen above. Prosecution witnesses have identified accused No.1 - 4, 7 to 9, 11 - 15 in the incident, in the identification parade and before the Court, which would mean that the accused persons were the members of the unlawful assembly. In complaint exh. 90, PW-9 has named accused No.1-3, 7 & 16. It is pertinent to note that there is no cross examination of PW-9 as to how he knew the names of these accused. The common object of the unlawful assembly was to commit murder of Dinesh Pathak as Raju Risaldar had given threats to Dinesh Pathak, also suggesting in his inaugural speech of Arki Garba that Dinesh Pathak along with two other persons would be removed. All these accused persons are the members of the Baroda unit of 'Shiv Sena' with Raju Risaldar as the President. With a view to achieve this common object, unlawful assembly comprising the accused persons was formed and attacked Dinesh Pathak on 22-5-1993. The evidence also discloses that after inflicting injuries on Dinesh Pathak, while running away, the members of the unlawful assembly uttered the words "whoever comes against their boss Raju Risaldar would meet the same fate" . These were the utterances by the members of the unlawful assembly and it would suggest participation of the members of the unlawful assembly in

the incident. In our opinion, the evidence on record sufficiently establishes that the accused persons were the members of the unlawful assembly and the common object of the said unlawful assembly was to commit murder of Dinesh Pathak. It is not necessary that the part played by each member of the unlawful assembly should be precisely stated in the evidence by prosecution witnesses. What is required is whether the unlawful assembly wherein the accused persons are the members committed the murder of Dinesh Pathak and thereby fulfilled the common object of the unlawful assembly, which fact in our opinion has been satisfactorily established by reliable and trustworthy evidence by the prosecution.

33. Exh. 69 is the Inquest Panchnama on the dead body of the deceased Dinesh Pathak. Exh. 52 to 57 are various panchnamas pertaining to the recovery of blood sample, recovery of clothes of the deceased, physical condition etc. Exh. 68 is the copy of the forwarding letter to the Forensic Science Laboratory. Exh. 132 to 146 are the panchnamas of certain accused about recovery of clothes, physical condition etc. Exh. 124 to 130 are the panchnamas regarding the recovery of muddamal articles and also the panchnama relating to search of the houses of the accused persons. Exh. 152 is the panchnama suggesting recovery of muddamal weapon at the instance of accused No. 15. Exh. 156 is the panchnama relating to physical condition of accused No. 7,9, 8, and 10, Exh. 158 is the panchanama suggesting the recovery of clothes of muddamal clothes by accused No.4. Exh. 204 is the panchnama for recovery of clothes and shoes by accused No.2. All these panchnamas are drawn under section 27 of the Evidence Act. Considering these panchnamas with the ocular evidence of the prosecution witnesses, the same deserves to be accepted.

34. Exh. 83 is the Report of the Forensic Science Laboratory. Considering the blood group of the deceased which is suggested to be of 'A' Group, Exh. 83 does not indicate human blood of Group 'A' found on any of the muddamal weapons. Ex. 83 is only a corroborative evidence. At the same time it may be appreciated that the eye witnesses to the occurrence examined by the prosecution have identified the appellants-convicts in the incident. It is also suggested that the accused as the members of the unlawful assembly with the deadly weapons like knife, khanjar, gupti, samurai, inflicted number of blows on Dinesh Pathak in the incident. As observed above the evidence of the witnesses to the occurrence is found to be satisfactory and reliable. It

is a settled legal position that if medical evidence is not consistent with the ocular evidence, in that case, the ocular evidence being direct and substantive evidence is to be preferred; since the medical evidence is only a corroborative piece of evidence and again an opinion based on experience.

35. It may be seen that the incident took place on 22-5-1993, identification parade was held on 17-6-1993, the recording of the evidence of prosecution witnesses started on 11-7-1994. Looking to the time gap we have to make allowance for contradictions, improvements, additions. The contradictions in the evidence of prosecution witnesses are far from material so as to shake the credibility of the evidence of the prosecution witnesses. It may also be realised that human mind is not computerised so as to reproduce, after more than one year every minute detail in the same sequence, and we have to reappreciate the entire evidence as a whole.

Having considered the decisions relied on by the Learned advocates for appellants-convicts and the Learned APP, in light of the facts of the present case and the evidence on record, we are inclined to uphold the judgment and order passed by the Trial Court.

36. Considering the entire evidence adduced in the case, in our opinion, the trial Court has justifiably reached the finding of guilt against the original accused No. 1,2, 3, 4, 7, 8, 9, 11, 12, 13, 14, 15 and 16 and the conviction and sentence imposed by the trial Court against these appellants-convicts does not call for any interference in the appeal, and therefore, Criminal Appeal No. 771 of 1995 challenging the conviction recorded and sentence imposed by the Trial Court against the appellants-convicts being devoid of merits is liable to be dismissed.

37. Criminal Appeal No. 660 of 1995 has been preferred by the State, challenging the acquittal recorded in favour of original accused No. 10, 17 and 18 (present respondents). The reappreciation of the evidence, in our opinion suggests that, there is no sufficient and satisfactory evidence so as to conclusively hold that original accused No. 10, 17 and 18 were the members of the unlawful assembly, as their presence in the incident cannot be said to have been proved beyond reasonable doubt by cogent and convincing evidence. It is pertinent to note that, the evidence on record does not sufficiently establish that accused No. 10 had told PW No.14 Kishore Uttekar or PW No.15

Ranjitsinh to conceal the weapons. Under the circumstances it cannot be said that the prosecution has been able to establish the involvement of accused No. 10. As far as accused No. 17 & 18 are concerned, there is no satisfactory and reliable evidence to suggest that these two accused persons were at Bombay with Raju Risaldar at the time of occurrence. Even that by itself cannot suggest the involvement of these accused in the crime. In our opinion, the evidence on record is far from satisfactory so as to hold accused No. 10, 17 & 18 guilty for the offence alleged against them, and therefore, Criminal Appeal No. 660 of 1995 being devoid of substance would be liable to be dismissed, confirming the acquittal recorded by the trial Court against original accused No. 10, 17 and 18.

38. In the result, Criminal Appeal No. 660 of 1995 is dismissed and the acquittal recorded by the Trial Court in favour of the respondents (original accused no.10, 17 and 18) are confirmed. The bail bonds, if furnished by the respondents, stands cancelled.

Criminal Appeal No. 771 of 1995 is dismissed and the conviction recorded and sentence awarded by the Trial Court against the appellants - original accused No. 1, 2, 3, 4, 7, 8, 9, 11, 12, 13, 14, 15 and 16 are confirmed.

DT: 01-10-2003 (N.G. NANDI, J)

(M.C. PATEL, J)

/vgn.